

LEGAL CONSTRAINTS

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I. Introduction

Defining pertinent legal parameters is an essential factor in establishing a solid basis on which the Fairbanks North Star Borough Trail Program can be built. Since the initiation of efforts by the Borough to develop a trail program, several legal issues have continually been brought forward in public meetings concerning trails. These issues, which include liability and controlling unauthorized trail use, must be researched and the existing laws clearly defined in order for the public, Borough, and other agencies to better understand and deal with these problems. In addition, legal matters such as Borough management authorities concerning trail rights-of-way and requirements for properly documenting trail corridors must be clarified in order for the Borough or trail user groups to understand the requirements for dedicating trails and how they can be managed once they are legally reserved.

The following paper reviews the principal legal issues which pertain to the establishment of a Borough trail network. Recommendations on how the Borough can best deal with specific issues will be included in the final Comprehensive Trail Plan document. Appendix A contains legal citations for the readers' reference. Appendix B is a glossary of legal terms.

II. Review of Legal Constraints

The following review of the major legal constraints pertaining to recreational trails is grouped into five principal categories. These categories include:

(1) management authorities concerning trail rights-of-way; (2) authorities to ensure proper trail usage; (3) right-of-way acquisition authorities; (4) requirements for legal documentation of trail rights-of-way and, (5) liability related to trail rights-of-way. In some instances the laws dealing with these issues will pertain to more than one category.

A. Management Authorities Concerning Trail Rights-of-way

Existing legal reservations of recreational trails can be divided into two basic categories consisting of: (1) rights-of-way or lands dedicated

specifically for recreation; and, (2) trails which are located within road or highway rights-of-way. Recreational trails which are established within state or federal recreation areas are within the management authority of the particular agency having jurisdiction over the land. These trails are not the management responsibility of the Fairbanks North Star Borough (FNSB), although they are important to consider when reviewing the availability of dedicated recreational trails to Borough residents.

1. Dedicated Trail rights-of-way

Dedicated trail rights-of-way include trails reserved by easements in less than fee simple title and trails which are dedicated to the public in full fee simple estate. Alaska Statute Sec: 29.48.030 (see Appendix A) provides that municipalities may exercise the powers to provide public recreation facilities. The FNSB has assumed the authority to regulate and manage recreational facilities which includes recreational trail rights-of-way. In addition, Alaska Statute Sec. 29.48.035 states that "a municipality may regulate the operation and use of its public rights-of-way, public facilities and services." It should be noted that easements which are not dedicated for public use are not considered public rights-of-way and, thus, do not fall within the regulatory authority of the FNSB.

Parks or trails which are dedicated to the public in fee simple title, and which have been accepted by the Borough are within the management authority of the FNSB as recreational facilities. When trails or parks are dedicated with restrictions to specific uses, FNSB management options are also subject to these same restrictions.

2. Trails Within Road or Highway Rights-of-way

As shown in the above section, the FNSB has the authority to regulate the operation and use of its public rights-of-way under Alaska Statute 29.48.035. Up to this time, the Borough has not

exercised this authority to any large extent. The major area where the Borough does exercise authority over road rights-of-way is within road service areas through the service area commissions. Road rights-of-way which are identified components of the state highway system are managed almost exclusively by the Alaska Department of Transportation and Public Facilities (ADOT/PF). Rights-of-way which have been tentatively identified under the terms of R.S. 2477 are also mainly regulated by ADOT/PF.

a. Trails Within State Highway System Rights-of-way

When trails are established within state highway system rights-of-way, a letter of non-objection or a permit to encroach into the right-of-way must be obtained from ADOT/PF through Alaska Statute 19.25.200. Normally, authorizations received from ADOT/PF for trail use of highway rights-of-way are granted subject to future highway relocation or expansion. An example of this is the authorization received by the FNSB from ADOT/PF prior to realigning a portion of the Skarland Ski Trail into the Ballaine Road right-of-way.

Alaska Statutes Section 41.21.866 states that "The commissioner of transportation and public facilities shall administer the plan and program providing for the establishment and maintenance of footpaths, bridle paths, bicycle paths, ski trails, dog sled trails, motorized vehicle trails and other paths and trails along certain designated existing highways, or when a highway, road or street is being constructed, reconstructed or relocated after June 7, 1972."

This statute also provides for the commissioner of The Department of Transportation and Public Facilities to establish a uniform system of marking paths and trails along highways. Although this law is mainly oriented toward trails established under the Alaska Trails and Footpaths Grant Program, it clarifies the authorities of the commissioner of ADOT/PF in regard to trails within highway rights-of-way. Up to the

present time, ADOT/PF has not actively implemented this authority except with the provision of bicycle paths. The FNSB can work more closely with ADOT/PF to utilize this authority. An example of how this can work is the Borough's recent efforts to work with ADOT/PF to include a trail within the road right-of-way for the proposed "Isberg Road" between Chena Ridge and the Cripple Creek Road.

The Alaska Administrative Code also provides the state the authority to control use of snowmobiles and other off-highway vehicles within highway rights-of-way. This subject will be covered under "Authorities to Ensure Proper Trail Use."

b. Trails Within Road Rights-of-way Outside the State Highway System

Management authorities of both the FNSB and ADOT/PF concerning road rights-of-way outside the designated state highway system are not regularly exercised. Alaska Statutes Sec. 19.05.030 states that one of the duties of ADOT/PF is to "direct approved highway planning and construction and maintenance, protection and control of highways;". Alaska Statutes 19.45.001 (8) states that "highway" includes a highway (whether included in primary or secondary systems), road, street, trail, walk, bridge, tunnel, drainage structure or other similar or related structure or facility, and right-of-way thereof....." These two laws provide the Department of Transportation and Public Facilities the authority to protect and control rights-of-way outside the designated state highway system, even if that authority is not presently utilized. In addition, the above legal definition of a highway within the State of Alaska indicates that a "highway" can range from a multi-lane asphalt freeway to a pedestrian walkway.

The Fairbanks North Star Borough has authority to regulate use of its public rights-of-way through Alaska Statute 29.48.035 as previously stated. The FNSB presently exercises limited

control over public road rights-of-way by controlling direct access to roads when new lots are created through the subdivision process. The Borough Code of Ordinances, Chapter 12, provides for protection of public roads and areas. Section 12.01.010 of this chapter states:

" It is the purpose of this chapter to provide for the protection of public roads and areas of the borough as provided herein. Nothing in this chapter shall be construed to prohibit objects or activities which do not impair the proper public use of a public road or public area."

Through the previously outlined authorities, both the Borough and ADOT/PF have some responsibilities pertaining to road rights-of-way outside the designated state highway system. None of these authorities prohibit the use of road rights-of-way for recreational trails. As long as trail activities do not impair public use of a right-of-way, they are considered legal and proper uses of highway rights-of-way.

An example of how trails can be a legal use of road rights-of-way was demonstrated when the residents of Chena Marina Subdivision initiated action to establish a service area. At that time concern was expressed about the legal status of dog sled trails within the road rights-of-way. These were not within the state maintained road system; and, thus, did not require an encroachment permit from ADOT/PF. The dog sled trails are a legal public use of a public right-of-way and can be continued whether the service area is formed or not. Once the service area is formed, it is up to the individuals in the service area to ensure that the dog sled trails do not impair public use of the roads and that plowing the road does not interfere with public use of the sleddog trails.

As previously noted, the Alaska Administrative Code provides special rules for the operation of snow machines and other

off-highway vehicles within highway rights-of-way. These laws will be covered more thoroughly under "Authorities to Ensure Proper Trail Use."

c. R.S. 2477 Rights-of-way

R.S. 2477 rights-of-way include rights-of-way established by public use over unreserved public lands and federal section line easements. Revised Statute 2477 is a federal law which is codified as 43 USCA § 932 and was repealed in 1976 by the Federal Land Policy and Management Act. Since this law was repealed no new rights-of-way can be established under this authority, however, previously existing valid rights-of-way are not affected. R.S. 2477 rights-of-way were established for highway purposes and their application to the protection of recreational trails is uncertain. The entire original statute is written as follows:

§ 932. Right-of-way for highways

The right of way for the construction of highways over public lands, not reserved for public uses, is hereby granted. R.S. § 2477.

Many trails within the Fairbanks North Star Borough and the entire state of Alaska were established by public use over, what was at that time, unreserved federal public lands. The Alaska Department of Transportation and Public Facilities maintains a listing of "the existing trails system" which are routes considered by the Department to have R.S. 2477 status. Since the time these rights-of-way were established across federal lands, much of the land crossed by these trails has been transferred into state, borough, and private ownership. Often times, R.S. 2477 rights-of-way are not clearly identified in public land records and have not been noted on deeds of land transferred out of federal ownership. In these cases, the rights-of-way may be only identified on the deed as "subject to

other valid existing rights-of-way". To add to the confusion, there have been disagreements between the state and federal government concerning the criteria necessary for a trail to qualify as an R.S. 2477 and which trails in the state have this status. Many of these questions may ultimately have to be resolved in the courts. When conflicts arise over the use of R.S. 2477 rights-of-way, the present policy of ADOT/PF is "to review any change of status of valid prior existing rights on a case by case basis."

The existence, management and use of R.S. 2477 rights-of-way is an important issue in regard to the Borough Trail Program. Out of 91 trails and trail systems included in the Comprehensive Trail Plan draft "Jurisdictional Responsibilities and Trail Inventory" paper, 35 have at least some portion identified as R.S. 2477's by ADOT/PF. Several of these trails, including the Circle-Fairbanks Trail and Chena Hot Springs Winter Trail, have been identified as high priority recreational trails by the Trails Advisory Commission. A major problem in dealing with these rights-of-way is the lack of a consistent and well defined policy within the state for management and protection of the rights-of-way.

In September 1981 the State of Alaska, Attorney General's Office issued an informal opinion on the management of R.S. 2477 rights-of-way. This Attorney General's Opinion states that:

"the Alaska Department of Transportation and Public Facilities has management authority over R.S. 2477 highways where they occur on non-state land. Where such highways occur on state land, the Alaska Department of Transportation and the state agency having management authority over the state land in question have concurrent authority over the highway."

This A-G opinion goes on to state that:

"So long as the right-of-way has been validly established by public use and is thereby acknowledged to exist, it remains free for public use, though the means of conveyance of the public over that right-of-way is subject to reasonable regulation to achieve other public purposes, such as minimization of terrain damage, avoidance of wildlife harrassment, and other reasonable restrictions to achieve such goals."

A second Attorney General's Opinion was issued in February, 1983 pertaining to the Circle-Fairbanks Trail, its status as an R.S. 2477, and whether the trail could be restricted to recreational use. This A-G Opinion states:

"a highway created by public user under the provisions of R.S. 2477 cannot be narrowly restricted to a particular type of public travel (i.e., recreational use; note added) except in those situations where road closure to certain vehicular use is necessary to protect road surfaces during certain seasons of the year."

Although some portions of these two A-G opinions may contradict each other, both opinions indicate that state management authority of R.S. 2477 rights-of-way is similar to other public highway rights-of-way authorities.

In summary, the state does have management authority over R.S. 2477 rights-of-way which are proven to be valid existing rights. This authority allows the state to protect these rights-of-ways from encroachment, regulate use of the rights-of-way and utilize portions of the rights-of-way for recreational trails similar to other state highway rights-of-way. Attorney General's Opinions indicate that

reasonable restrictions can be made on the rights-of-way as long as they remain free for public use. In addition, as public rights-of-way within the Borough, the FNSB can regulate R.S. 2477's through powers granted under Alaska Statute 29.48.035.

B. Authorities to Ensure Proper Trail Use

Although the Fairbanks North Star Borough and other agencies have the legal authority to manage trail rights-of-way, unauthorized uses of trail corridors can be very difficult to prevent on a practical, on the ground basis. There are many different perceptions among trail users and property owners about what types of trail uses are appropriate and compatible. Concerns have most often centered around prevention of motorized trail use on trails designated for non-motorized activities only. Fear of uncontrolled use of non-motorized trail easements by snowmachines and dirt bikes can make property owners reluctant to establish trail easements. The following section of this report defines what uses of trail or highway rights-of-way are legal and what laws presently exist to help ensure proper trail use.

1. Legal Uses of Trail Dedications and Existing Enforcement Authorities

Rights-of-way which are dedicated for recreational trail use can be used only for the purposes allowed on the recording instrument which establishes the dedication. Easements which are identified only by the phrase "trail easement" are available for general trail use. A possible exception to this rule could be found if the FNSB adopted a particular regulation for use of the easement through public right-of-way regulation authority. Easements or land dedicated on their recording instrument for a specific trail use such as "non-motorized recreational trail easement" can be used only for the use specified. Borough right-of-way regulation authority is also limited by restrictions on the recording instrument. In the same

manner, easements which are established for utility purposes cannot legally be used for trail corridors unless the use is specifically provided for on the recording instrument.

Use of any easement for purposes other than what the easement is specifically established for is considered unlawful. As such, this use can be prosecuted as criminal trespass in the second degree under Alaska Statute Section 11.46.340 (see Appendix A). If any damage is caused by illegal use of easements, it may constitute criminal mischief and persons can be held criminally liable.

Additionally, the Alaska Administrative Code provides "No snowmobile or other off-highway vehicle may cross or travel on a sidewalk, a location intended for pedestrian or other non-motorized traffic, an alley, or a vehicular way or area which is not open to snowmobile or off-highway vehicle operations...." (13 AAC 02.455(g)). This law also establishes provisions for direct crossings of highways and non-motorized areas by snowmobiles or off-highway vehicles.

Although the Fairbanks North Star Borough has not acted to assume the authority, Alaska Statute Section 29.48.035 allows municipalities to regulate "vehicle, pedestrian and other traffic, and licensing and operation of motor vehicles, including snow vehicles and off-highway vehicles, and operators..." as long as these regulations do not conflict with state laws. Alaska Statute Section 05.30.070 also allows the regulation, by ordinance, of these and operation of snow vehicles within political subdivisions of the state. There has been no need shown to implement these authorities at the present time, however, they are available if severe problems develop in the future.

Chapter 9.12 of the Fairbanks North Star Borough Code of Ordinances defines offenses against public property and provides a penalty for violations. Section 9.12.010A states:

"No person may enter upon, occupy or use any borough park or recreation facility except in accordance with borough parks and recreation rules and regulations."

This section also prohibits damage or littering of park or recreation property.

Through the above state and borough laws, the FNSB has the authority necessary to control use of dedicated and accepted trails whether they are reserved by easements or fee simple estate.

2. Legal Use of Trails Within Highway Rights-of-way

Trail use of highway rights-of-way can be a legal and legitimate use of a public right-of-way. Under Alaska Statute 41.21.866, the Commissioner of the Department of Transportation and Public Facilities has the authority to provide for establishing and maintaining both motorized and non-motorized trails along highways or roads. If trails are established by an approved plan submitted by the Department of Transportation and Public Facilities, the trails can be used for types of uses written into the plan.

The Alaska Administrative Code section on Public Safety (13AAC) provides detailed stipulations for use of bicycles, nonmotorized conveyances, motorcycles, snowmobiles and off-highway vehicles on highways (see Appendix A). The Alaska State Troopers have summarized laws pertaining to snowmachine and off-road vehicles in a short brochure entitled "Alaska Law ATVS" (see figure 1). The Alaska Administrative Code does allow use of snowmachines and off-highway vehicles when "driven on the right-of-way of a highway which is not a controlled access highway, outside the roadway or shoulder, and no closer than three feet from the nearest edge of the roadway; night driving may only be on the right-hand side of the highway and in the same direction as the highway motor vehicle traffic in the nearest lane of the roadway...." (13 AAC 02.455(a)(4)). This law also includes stipulations for safe bridge and culvert crossings, special authorizations for use of highways and allowable methods of crossing highways by snowmachines and off-highway vehicles. Alaska Statute Section 05.90.001 allows for racing events of snow vehicles or motorcycles on highways if

For more information contact your
local Alaska State Troopers office:

13 AAC 02.455. OPERATION ON
HIGHWAYS AND OTHER LOCATIONS. (a) A
snowmobile or an off-highway vehicle may be
driven on a roadway or shoulder of a highway
only under the following circumstances:

(1) when crossing a highway as provided in
(f) of this section, or when traversing a bridge or
culvert on a highway, but then only by driving
at the extreme right-hand edge of the bridge or
culvert and only when the traverse can be
completed with safety and without interfering
with other traffic on the highway;

(2) when use of the highway by other motor
vehicles is impossible because of snow or ice
accumulation or other natural conditions or
when the highway is posted or otherwise
designated as being open to travel by
off-highway vehicles;

(3) when highway driving is authorized by an
authority having jurisdiction over the highway,
but only in accordance with restrictions which
may be imposed by that authority with regard
to highway use; or

(4) when driven on the right-of-way of a
highway which is not a controlled-access
highway, outside the roadway or shoulder, and
no closer than three feet from the nearest edge
of the roadway; night driving may be only on
the right-hand side of the highway and in the
same direction as the highway motor vehicle
traffic in the nearest lane of the roadway; no
person may drive an off-highway vehicle within
the area dividing the roadways of a divided
highway, except to cross the highway as
provided in (f) of this section.

(f) A snowmobile or an off-highway vehicle
may make a direct crossing of a highway if

(1) the crossing is made approximately at a
right angle to the highway and at a location
where visibility along the highway in both
directions is clear for a sufficient distance to
assure safety, and the crossing can be completed
safely and without interfering with other traffic
on the highway; and

(2) the vehicle is brought to a complete stop
before crossing the shoulder or roadway, and the
driver yields the right-of-way to all traffic on the
highway.

(g) No snowmobile or other off-highway
vehicle may cross or travel on a sidewalk, a
location intended for pedestrian or other
nonmotorized traffic, an alley, or a vehicular
way or area which is not open to snowmobile or
off-highway vehicle operation, except as
provided in (f) of this section. (Eff. 12/31/69,
Reg. 31; am 7/23/70, Reg. 35; am 6/28/79, Reg.
70)

Authority: AS 28.05.011

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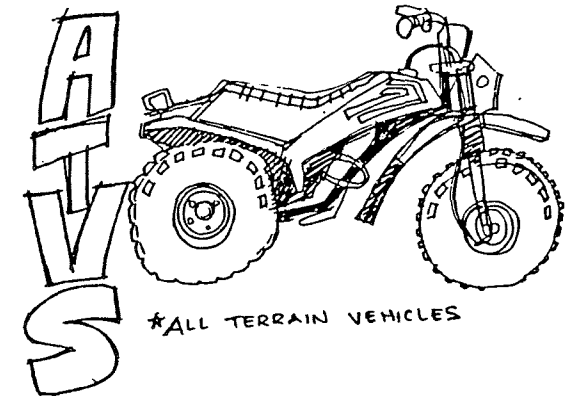
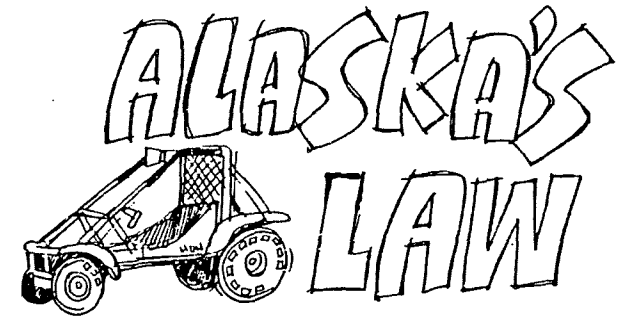
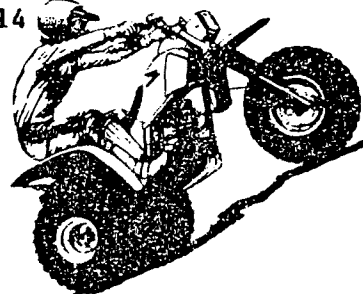
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*ALL TERRAIN VEHICLES



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OFF ROADWAY FUN

Many Alaskan's enjoy riding 3-Wheel & 4-Wheel ATV's (All Terrain Vehicles) because they allow access to many remote areas all year long. Over mountains, trails, through swamps & tundra, across streams, and in hard packed snow, these Off Highway vehicles excel.

They come in different models, makes, colors, engine sizes and, of course, the manufacturers promise that his is the best work and recreational vehicle available.

There is also the instruction that the vehicle is for OFF-ROAD USE ONLY.

REGISTRATION

Alaska statute 28.10.011 requires that all motor vehicles driven "upon a highway or other public parking place" shall be registered. However, ATV's do not comply with Federal Department of Transportation standards for tires and rims. No ATV on the market today meets federal emission standards since no manufacturer has applied for such.

Therefore, they are deemed unsafe for road use and cannot be registered as motor vehicles.

SNOW VEHICLES

A vehicle with low pressure tires, (3-wheel & 4-wheel ATV's) may qualify as a snow vehicle. Such vehicles are required to be registered the same as snowmobiles (AS.05.30.120). This statute will permit you to have your ATV registered to prevent theft but does not mean it is licensed. Under Alaska Statute 05.30.010, a person may not operate a snow vehicle off his private property unless to the snow vehicle has been registered with the Department of Public Safety.

AS.05.30.020 (Alaska Statute) provides for a 2 year registration fee of \$5.00 and AS.05.30.040 refers to permanent numbered decals provide with the registration.

Required equipment is outlined in AS.05.30.080 and refers to brakes, head lamps, throttle, and exhaust muffler.

RESPONSIBILITY

Alaska Statutes 05.30.100-120 are general provisions for snow vehicles which direct procedures for accident reporting, penalty and the definition of snow vehicles.

Section 05.90.001 also gives guidelines for operating snow vehicles on state highways for special racing events.

Under the Administrative Code, Parents can be cited for allowing their children to violate any of the snow vehicle and off highway vehicle sections.

Just remember, reckless driving on off roadway vehicles is an arrestable offence. You could be charged with trespassing if you ride on private property without permission. Any damages you cause constitute criminal mischief and you are held criminally liable. Loud mufflers in residential areas bring complaints of disorderly conduct.

IMPOUND

Under 13AAC02.345(b)(2), A Police Officer may impound & remove to a place of safety a vehicle which is found or operated on a highway without license plates or registration.

Parent/Guardians, AS.34.50.020 places liability upon you for civil damages & court costs up to \$2,000 resulting from wilful or malicious damage to real or personal property by minors under your legal custody.

Off highway vehicles are good working and recreational outlets for all Alaskans. Just operate them in a reasonable and safe manner, obey the State laws pertaining to them, and be courteous toward others.

consistent with federal law and a permit is concurred upon by the Commissioner of the Department of Transportation and Public Facilities.

Alaska Statute Section 05.30.010 requires all snow vehicles (which may include 3 and 4 wheel all-terrain vehicles) which are operated off of private property to be registered. Unregistered snow vehicles can be impounded by State Troopers under 13 AAC 02.345.

3. Encroachment Upon Trail Rights-of-way

The FNSB Code of Ordinances Title 12 provides for protection of public roads and areas. Section 12.01.020 prohibits encroachments and section 12.01.030 provides for removal of encroachments in, on, under or over a public road or area dedicated to public use. The definitions provided for public areas and roads include parks, greenbelts, recreational areas, highways, roads, walks and trails. Alaska Statutes Section 19.25.210 provides for removal of encroachments from state highway rights-of-way.

C. Right-of-Way Acquisition Authorities

As indicated in the draft "Jurisdictional Responsibilities and Trail Inventory" paper, the majority of the existing trail network within the Fairbanks North Star Borough has no clearly defined legal rights-of-way. This portion of the report outlines presently existing mechanisms and authorities to acquire recreational trail rights-of-way..

1. Existing Fairbanks North Star Borough Recreational Trail Right-of-way Acquisition Authority

a. Limitations

The Fairbanks North Star Borough Assembly established policy for recreational trail acquisition with Resolution No. 80-9 in

February 1980 (see appendix A). This policy is primarily orientated toward trail easement acquisition on private lands and has a strong emphasis toward working cooperatively with land developers. The policy does not provide any special authority to acquire trail easements, but rather, defines limitations and guidelines on how the acquisition process should work.

Section 1.d. of this policy states: "Eminent Domain powers shall not be utilized for the acquisition of recreational trail easements." The policy allows for acquisition of easement rights by a variety of methods including public dedication, easements by purchase or donation, right-of-way permits or by cooperative agreements. Easements can be granted for certain uses or seasons for particular trail requirements. The policy states that at the time of initial easement acquisition "trail alignment shall be adjusted.....to coincide with property boundaries.....in order to maintain property use and development rights with the provision that the trail's utility is maintained."

Section 2.e. of the policy provides a mechanism for priorities for easement acquisition to be set each year by the Planning Commission and Assembly, however, this process has not been instituted up to this time. Section 2.e provides that considerations in establishing priorities for easement acquisition should include "intensity of public use on the trail, multiplicity of use on the trail, utility of the trail for point to point access, and land tenure."

Section 4.b. of the policy states that all subdivisions brought before the Planning Commission (now delegated to the Platting Board) "shall be assessed for trail system needs. Voluntary easements will be encouraged for the public good, but failure to grant such easements shall not prejudice the developers' right for approval."

b. Easement Acquisition Authority

The Borough subdivision ordinance section 17.20.010 establishes subdivision design requirements and provides that consideration shall be given to the allocation of suitable areas for parks and other areas to be dedicated for public use. The ordinance also provides for dedication of easements along streams for protecting the stream or for sanitary or recreational uses. Part EE. of section 17.20.010 provides that when easements are established for multiple uses, one intended use of the easement must not inhibit or prevent the other intended use of the easement. The ordinance emphasizes this with regard to co-use utility easements.

Through FNSB Title 17, the Borough Platting Board could require a trail easement in a new subdivision if it was demonstrated that such a reservation was a necessary "public space". On private lands not being subdivided, trail rights-of-way can be acquired from willing landowners. Where landowners are not willing to negotiate trail easements, trails must be realigned to locations where legal rights-of-way can be acquired or the trail must eventually be abandoned for public use.

2. Acquiring Rights-of-way on public lands.

Both the Fairbanks North Star Borough and the State of Alaska have defined procedures for establishing rights-of-way on lands to be retained in public ownership and lands being prepared for disposal. In addition, the Bureau of Land Management regulates the permitting of rights-of-way across federal lands.

a. Fairbanks North Star Borough

Recreational trail use can occur on Borough lands as a casual use requiring no written authorization, a temporary use requiring a written permit or can require an easement or lease.

Title 16 of the FNSB Code of Ordinances defines the different levels of use of Borough lands and the process used to establish easements. Section 16.01.020 provides that "The borough shall identify and retain ownership to those lands required for public uses in the future." In order for Borough property to be dedicated for public recreation it must be approved by a resolution of the Assembly. This was the mechanism used to dedicate land at Two Rivers and Salcha for cross-country ski trail networks.

Dedication of an easement across Borough lands also requires a resolution of the Borough Assembly (FNSB 16.18.010). Requests for dedication of Borough lands by easements or fee simple title are handled by the Division of Land Management. The Division of Land Management is also responsible for establishing dedications for public purposes in Borough land disposals. These reservations are approved by the Borough Assembly in conjunction with approval of the disposal.

The FNSB Code of Ordinances (16.05.060) authorizes the Borough Assembly to exchange land or interests in land when such an exchange would be advantageous to the Borough or when it is in the public interest to do so.

b. State of Alaska

Alaska Statute Sec. 38.05.330 provides the director of the Division of Land and Water Management the authority to issue permits, rights-of-way or easements on state land for trails. The Department of Natural Resources Policy and Procedures Manual chapter 5122, section 02, item 3.10 indicates that state action may create public easements on state land in response to an application filed under A.S. 38.05.330 or during the platting process prior to land conveyance. Individuals, organizations or public agencies may apply for easements on state lands at the Division of Land and Water Management. The general public and agencies are also provided the opportunity

to comment on trail or other reservations needed in state land disposals.

Through A.S. 38.05.315 state land can be conveyed to political subdivisions of the state or non-profit corporations, associations or clubs for public and charitable purposes. State land could be conveyed to the Borough for trail recreation purposes through this authority. The Borough would be required to maintain and operate land acquired under this authority in a manner consistent with the original application purpose.

c. federal government - Bureau of Land Management

The Federal Land Policy and Management Act of 1976 (P.L. 94-579) Section 501 provides the Bureau of Land Management the power to authorize rights-of-way. Rules for applying for these rights-of-way are found in Title 43, part 2800 of the Code of Federal Regulations. Right-of-way applications can be made by agencies or individuals under this authority at the Bureau of Land Management (BLM) office on Ft. Wainwright. The FNSB presently has an application pending at BLM for a right-of-way for a portion of the Skyline Ridge Trail.

The Fairbanks North Star Borough is eligible to obtain recreational land from the BLM through the Recreation and Public Purposes Act (RPP) of 1954. Regulations for obtaining land through this authority are found in Title 43 of the Code of Federal Regulations, parts 2740 and 2912. This act authorizes the Secretary of the Interior to either lease or sell lands. Organizations who desire to purchase lands must first accept a lease to assure proper development of the land prior to issuance of a patent. Applications for land through RPP requires preparation of development and management plans and lands may be subject to certain terms or conditions. The FNSB School District's Heritage Park outdoor education site is being acquired from BLM through the Recreation and Public Purposes Act.